IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court No.3

Criminal Revision No. 54 of 2001
(Old No. 329/1987)

1. Shri Dhar
2. Vimal sons of Kishori Lal
   R/o village Thapli Patti Kapholsyun District
   Pauri Garhwal ……Revisionists.

Vs.

State of U.P. ……..Respondent.

Hon'ble Irshad Hussain, J.

Heard Ms. Seema Sirohi learned counsel for the revisionists and learned A.G.A. for the respondent.

2- This is a criminal revision under section 397/401 of the Code of Criminal Procedure (for short 'Code') against the judgment and order dated 11.11.1986 passed by the then Sessions Judge, Pauri Garhwal partly allowing the criminal appeal No. 18 of 1986 and thereby upholding the conviction and sentence of fine under section 323 I.P.C. awarded to the two revisionists and at the same time setting aside the conviction and sentence awarded by the learned Magistrate against the three others under sections 147/323 I.P.C.

3- The facts of the case briefly stated where that complainant Smt. Shaila Devi (P.W.1) lodged an F.I.R. at P.S.Pauri on 13.8.1984 at 14.10 alleging that she had been assaulted by the five accused named therein including the two revisionists at 7 p.m. on 12.8.1984 and that she had sustained injuries. All the five accused were related to her and there was some property dispute. On charge sheet being submitted after investigation all the five accused were tried and the then Munsif Magistrate, Pauri Garhwal convicted all of them under sections 147/323 I.P.C. and sentenced them to pay fine of Rs. 250/- each, per judgment and order dated 11.8.1986. As stated above on appeal being preferred the three accused named as Chandra Mohan, his wife Smt. Subhaga Devi and

one of their son were acquitted by the learned Sessions Judge. The other two sons who are the revisionists were however convicted under section 323 I.P.C. and their sentence of fine was upheld.

4- The learned counsel for the revisionists argued that the judgment of the learned Sessions Judge upholding the conviction and sentence of the two revisionists is self-contradictory in the sense that it had been held that other three alleged assailants have been falsely implicated in the case and at the same time the two revisionists have been saddled with the responsibility of assaulting the victiom and that this approalch has resulted in gross mis-carriage of justice. P.W.1, and her daughter Km. Lata (P.W.2) have admitted that there was some property dispute with the accused who were closely related to them. P.W.1 was suggested that on account of enmity the accused was falsely implicated although no incident of assault took place. P.W.1 was medically examined and Medical Officer Dr. Atul Kumar Verma (P.W.3) could not detect any visible injury on her person. She has merly complained of pain on some parts of the body. Strangely enough the complainant gave out that she had been assaulted with Lathi, Chappals, fists and Dranti by the five assailants and still not a single visible injury was found on her person. In the totality of the circumstances of the case when it had been held that three accused have not assaulted her there was no occasion to place implicit reliance on the evidence of the complainant and her daughter and another witnesses Bhajan Singh (P.W.4) and Anand Lal (P.W.5) that these two revisionists were the actual assailants of the victim. There was absolutely nothing to hold these two as guilty when at the same time it was found that the complainant had tendency to falsely implicate other three accused.

5- In the face of the facts of the case these two revisionists could not have therefore, been held guilty of committing the offence. There are thus reasons to record the finding that there is flaring defect in acceptance of the evidence of the prosecution leading to a flagrant miscarriage of justice.

6- For the forgoing reasons I am of the view that it is a fit case in which the revisional power need to be exercised to prevent gross miscarriage of justice by setting aside the appellate order of conviction and sentence against the revisionists.

7- The revision is therefore allowed. The judgment and order dated 11.11.1986 of the Sessions Judge, Pauri Garhwal in criminal appeal No. 18 of 1986 is set aside against the revisionists also and they are acquitted of the charge under section 323 I.P.C. The fine, if deposited, shall be refunded to them.

(Irshad Hussain, J.)

Dated 7.11.2003
ISB